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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/645,035 | 08/21/2003 | Michael E. Ring | CRD 01482 | 7356 |

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03/02/2010

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| EXAMINER |
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BURCH, MELODY M

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3657

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03/02/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | | |
|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 10/645,035 | | RING ET AL. | |
| | Examiner | | Art Unit | |
| | Melody M. Burch | | 3657 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,6,9-13,16-18 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9,11-13,16-18,26 and 27 is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,10,23-25 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2010 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/24/10 has been entered.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "64" has been used to designate both outward extending portion in plane of first plate member and second plate member extending perpendicular to first plate member and connected to element 76. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The amendment filed 2/24/10 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The originally filed specification failed to include the limitation of the second plate member being "directly attached" to the first plate member. Also, for connection for force-transfer levers 16 by pins 19 on pg. 23 of the amendment to the disclosure is new matter. Also, the explanation of "for providing added strength between the first plate member and the second plate member" on pg. 24 of the amendment to the disclosure is new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

4. The disclosure is objected to because of the following informalities: On pg. 21 of the most recent amendments to the disclosure in line 9 from the bottom "54" should be changed to --56-- also "and" should be changed to --end--, in line 10 from the bottom "52" should be changed to --54--, and in line 11 from the bottom one of characters "54" should be changed to --56--. On pg. 22 of the most recent amendments to the disclosure in lines 8 and 10 from the bottom "FFIG." Should be changed to --FIG.-- Also, in line 12 from the bottom the phrase "64, 66" should be changed to --64', 65--. A distinction needs to be made between element 64 the plate portion that extends outward in the plane of the first plate member and element 64 that extends upward and perpendicular to the first plate member and is connected to element 76.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1, 2, and 5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure fails to provide support for the limitation of the second plate member being "directly attached" to the first plate member as first recited in section (b) of claim 1. Examiner notes that claim 3 shows a second plate member 64 being attached to a first plate member 66, but because of the angle of the view, it is unclear whether part 64 is directly or indirectly attached to first plate member 66. Examiner further notes that the language of the second plate member being directly attached to the first plate member was found nowhere in the originally filed specification. Instead, the language was added in the most recent amendment to the specification. The remaining claims are rejected due to their dependency from claim 1.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 6, 10, 23, 24, 25, and 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "said mounting member" in claim 6 is indefinite. It is unclear to the Examiner as to which mounting member Applicant intends to refer to since a plurality of mounting members was previously recited.

The phrase "said pair of elongated members" in claim 10 is indefinite. It is unclear to the Examiner as to which pair of elongated members Applicant intends to refer to since a plurality of pair of elongated members was previously recited.

The phrase "said flange" in claim 28 is indefinite. It is unclear to the Examiner as to which flange Applicant intends to refer to since a plurality of flanges was previously recited.

The remaining claims are indefinite due to their dependency from claim 6.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-2, 5-6, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6792704 to Johnson in view of US Patent 6116385 to Ring.

Re: claim 1. Johnson shows in figures 1 and 2 an actuating member capable

of being used for a railway vehicle brake assembly, the vehicle brake assembly having an air spring actuator 1 incorporated therein, the air spring actuator having a pair of spaced apart end surfaces below 18(a) and above 18(b) and at least one inflatable air bag spring 3 defining an exterior peripheral surface of the air spring actuator, at least one of the pair of spaced apart end surfaces at least the top one having a plurality of mounting member extending outwardly therefrom as shown, said actuating member comprising: a first plate member 18(a) disposed substantially vertically with respect to element 20 during use of the brake assembly, the first plate member having a first substantially planar surface thereof disposed in abutting relationship with one of the pair of spaced apart end surfaces of the air spring actuator as shown, the first plate member exposing the exterior peripheral surface of the at least one inflatable air spring to an atmospheric operating environment characterized by a presence of detrimental extraneous foreign material when the car mounted brake assembly is in use; a second plate member 20 disposed substantially horizontally with respect to 18(a) during use of the brake assembly, the second plate member directly attached to the first plate member at a bottom edge thereof and extending substantially perpendicular to the first substantially planar surface of the first plate member for shielding at least a first portion of the exterior peripheral surface of the air spring actuator from the detrimental extraneous foreign material; a structure 17,35 disposed on and attached to an opposed second surface of the first plate member for securing the actuating member to an actuating linkage of the brake assembly; a plurality of mounting apertures formed through a thickness of the first plate member as shown each of the plurality of mounting

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apertures operatively aligned with and sized to pass therethrough a perspective one of the plurality of mounting members extending outwardly from the one of the pair of end surfaces, and a pair of plate portions shown in the area of the end of lead lines 24 disposed planar with the first plate member adjacent a top edge thereof, each of the pair of plate portions protruding outwardly from a respective side edge of the first plate member.

Johnson is silent with regards to the vehicle brake assembly being a railway vehicle brake assembly.

Ring teaches in figures 1 and 3 the use of a brake assembly being in the form of a railway vehicle brake.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified vehicle brake assembly of Johnson to have been a railway vehicle brake system, as taught by Ring, in order to provide a means of controlling movement between components of a rail vehicle to improve the feel of the ride on the rail vehicle.

Johnson is silent with regards to the other spaced apart end surface having a plurality of mounting members.

Johnson teaches in figure 2 the top spaced apart end surface having a plurality of mounting members.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the other spaced apart end surface to have

included a plurality of mounting members, as taught by Johnson, in order to provide an effective way of securing the end surface to portion 18(b).

In *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced.

Re: claim 2. Johnson, as modified, shows in figures 1 and 2 of Johnson wherein the actuating member further includes a third plate member or other/left element 20 which is indirectly connected to the second plate member 20.

Re: claim 5. Johnson, as modified, shows in figure 1 of Johnson the means 17 including at least one plate member 17 having an aperture formed therethrough shown surrounding element 12 and a pin member 12 disposed in the aperture for securing the at least one plate member to such control linkage.

Re: claims 6, 23, and 24. See the rejection of claim 1 and the elongated members are left and right elements 20.

Re: claim 25. See elongated member 20,18(b) with 18(b) representing the greater width portion.

11. Claims 1-2, 5-6, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Ring and further in view of US Patent 6142480 to Streitman et al.

Johnson, as modified, is not explicit with regards to the operating environment being characterized by a presence of detrimental extraneous foreign material.

Streitman et al. teach in col. 1 the use of a railway vehicle brake being in the environment characterized by a presence of detrimental extraneous foreign material.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a surrounding environment characterized by detrimental extraneous foreign material, as taught by Streitman et al., since it is old and well-known in the art that vehicles operate in an environment marked by detrimental extraneous foreign material such as vehicle emissions and other harmful byproducts output from other machines.

Allowable Subject Matter

12. Claims 9, 11-13, 16-18, 26, and 27 are allowed.

13. Claims 10 and 28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

14. Applicant's arguments filed 2/24/10 have been fully considered but they are not persuasive. Examiner has presented a new interpretation of Johnson and notes that "vertical" and "horizontal" are relative terms. In fact, the term vertical is defined in Merriam Webster Online as being "located at right angles to the plane of a supporting surface." Examiner maintains that element 18(a) and the end surface below it may be considered to be vertically disposed with respect to the plane of a support surface of element 20.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 571-272-7114. The examiner can normally be reached on Monday-Friday (6:30 AM-3:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mmb
March 1, 2010

/Melody M. Burch/
Primary Examiner, Art Unit 3657

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